

WC 03-39

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TOKYO, JAPAN

February 4, 2003

BY HAND DELIVERY

Federal Communications Commission
Wireline Competition Bureau – CPD – 214 Appls.
P.O. Box 358145
Pittsburgh, Pennsylvania 15251-5145

Re: In the Matter of Section 63.04 Application of Ionex Telecommunications, Inc.,
Transferee, and the Shareholders of Birch Telecom, Inc., Transferors, For
Authority to Transfer Control of Birch Telecom, Inc. and its Subsidiaries
Holding Domestic 214 Authorizations to Ionex Telecommunications, Inc.

Dear Sir or Madam:

On behalf of Ionex Telecommunications, Inc. and the Shareholders of Birch Telecom, Inc., attached for filing please find an original and five (5) copies of the above-referenced Application. Attached please also find a check in the amount of \$860.00 to cover the requisite fee for this Application and a duplicate of this filing. Please date-stamp the duplicate upon receipt and return it to the courier in the envelope provided.

Please feel free to contact me at (202) 887-1211 if you have any questions regarding this filing.

Respectfully submitted,


Brett Heather Freedson

Attachments

cc: Qualex International
Jeffery Marks, Esq., Latham & Watkins, LLP

READ INSTRUCTIONS CAREFULLY
BEFORE PROCEEDING

FEDERAL COMMUNICATIONS COMMISSION
REMITTANCE ADVICE

Approved by OMB
3060-0589
Page No 1 of 1

(1) LOCKBOX # 358145

SPECIAL USE

FCC USE ONLY

SECTION A - PAYER INFORMATION

(2) PAYER NAME (if paying by credit card, enter name exactly as it appears on your card)
Kelley Drive & Warren LLP

(3) TOTAL AMOUNT PAID (U.S. Dollars and cents)
\$860.00

(4) STREET ADDRESS LINE NO. 1
1200 19th Street, N.W.

(5) STREET ADDRESS LINE NO. 2
Suite 500

(6) CITY
Washington

(7) STATE
DC

(8) ZIP CODE
20036

(9) DAYTIME TELEPHONE NUMBER (include area code)
(202) 955-9600

(10) COUNTRY CODE (if not in U.S.A.)

FCC REGISTRATION NUMBER (FRN) AND TAX IDENTIFICATION NUMBER (TIN) REQUIRED

(11) PAYER (FRN)
0007099294

(12) PAYER (TIN)
13-5335107

IF PAYER NAME AND THE APPLICANT NAME ARE DIFFERENT, COMPLETE SECTION B
IF MORE THAN ONE APPLICANT, USE CONTINUATION SHEETS (FORM 159-C)

(13) APPLICANT NAME
Ionex Telecommunications, Inc.

(14) STREET ADDRESS LINE NO. 1
15305 Dallas Parkway

(15) STREET ADDRESS LINE NO. 2
Suite 1500

(16) CITY
Addison

(17) STATE
TX

(18) ZIP CODE
75001

(19) DAYTIME TELEPHONE NUMBER (include area code)
(214) 646-2300

(20) COUNTRY CODE (if not in U.S.A.)

FCC REGISTRATION NUMBER (FRN) AND TAX IDENTIFICATION NUMBER (TIN) REQUIRED

(21) APPLICANT (FRN)
0006282735

(22) APPLICANT (TIN)
84-1510894

COMPLETE SECTION C FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET

(23A) CALL SIGN/OTHER ID

(24A) PAYMENT TYPE CODE
CUT

(25A) QUANTITY
1

(26A) FEE DUE FOR (PTC)
\$860.00

(27A) TOTAL FEE
\$860.00

FCC USE ONLY

(28A) FCC CODE 1

(29A) FCC CODE 2

(23B) CALL SIGN/OTHER ID

(24B) PAYMENT TYPE CODE

(25B) QUANTITY

(26B) FEE DUE FOR (PTC)

(27B) TOTAL FEE

FCC USE ONLY

(28B) FCC CODE 1

(29B) FCC CODE 2

SECTION D - CERTIFICATION

(30) CERTIFICATION STATEMENT

I, Brett Heather Woodson, certify under penalty of perjury that the foregoing and supporting information is true and correct to the best of my knowledge, information and belief.

SIGNATURE

DATE 2/4/03

SECTION E - CREDIT CARD PAYMENT INFORMATION

(31)

MASTERCARD/VISA ACCOUNT NUMBER:

EXPIRATION
DATE:

☐

MASTERCARD

☐

VISA

I hereby authorize the FCC to charge my VISA or MASTERCARD for the service(s)/authorization herein described.

SIGNATURE

DATE

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
SHAREHOLDERS OF)
BIRCH TELECOM, INC.)
TRANSFERORS)
)
AND)
)
IONEX TELECOMMUNICATIONS, INC.)
TRANSFeree)
)
Application for Authority to Transfer)
Control of Birch Telecom, Inc.)
and its Subsidiaries Holding)
Domestic 214 Authorizations to Ionex)
Telecommunications, Inc.)

FCC/MELLON FEB 04 2003

To: Competitive Policy Division, Wireline Competition Bureau

APPLICATION

Ionex Telecommunications, Inc. ("Ionex") and Birch Telecom, Inc. ("Birch") and its Shareholders (collectively, the "Applicants"), pursuant to Section 214(a) of the Communications Act of 1934, as amended, 47 U.S.C. § 214(a), and Section 63.04 of the Commission's rules, 47 C.F.R. § 63.04, hereby respectfully request authority to transfer ownership and control of Birch, and indirect control of Birch's operating subsidiaries¹ holding blanket Section 214 authorizations to provide domestic

¹ The following subsidiaries of Birch currently are authorized to provide domestic telecommunications service: Birch Telecom of the Great Lakes, Inc. (Illinois, Indiana, Michigan, Ohio, Wisconsin); Birch Telecom of Kansas, Inc. (Kansas); Birch Telecom of Missouri, Inc. (Missouri); Birch Telecom of Oklahoma, Inc. (Oklahoma); Birch Telecom of the South, Inc. (Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee); and Birch Telecom of Texas Ltd., L.L.P. (Texas). Each of these companies is a direct, wholly owned subsidiary of Birch, with the exception of Birch Telecom of Texas, Ltd. L.L.P., of which Birch is a limited partner with a 99 percent equity

telecommunications service, from the existing Shareholders of Birch to Ionex.

Pursuant to Section 63.04(a) of the Commission's rules, the Applicants hereby provide the following information in support of their Application:

- (1) The name, address and telephone number of each Applicant:

BIRCH TELECOM, INC. (and its Shareholders² and Subsidiaries)
2020 Baltimore Avenue
Kansas City, Missouri 64108
(816) 300-3000

IONEX TELECOMMUNICATIONS, INC.
15305 Dallas Parkway, Suite 1500
Addison, Texas 75001
(214) 646-2300

- (2) The government, state or territory under the laws of which each corporate or partnership Applicant is organized:

Ionex Telecommunications, Inc. is a corporation formed under the laws of the State of Delaware.

Birch Telecom, Inc. is a corporation organized under the laws of the State of Delaware. The Birch operating subsidiaries that currently are authorized to provide domestic telecommunications services are formed under the laws of the states indicated: Birch Telecom of the Great Lakes, Inc. (Delaware); Birch Telecom of Kansas, Inc. (Kansas); Birch Telecom of Missouri, Inc. (Delaware); Birch Telecom of Oklahoma, Inc. (Delaware); Birch Telecom of the South, Inc. (Delaware); and Birch Telecom of Texas Ltd. L.L.P. (Texas). A corporate organizational chart depicting all subsidiaries of Birch, which will remain the same upon completion of the transaction, is attached hereto as *Exhibit A*.

interest and Birch Texas Holdings, Inc. is a general partner with a 1 percent equity interest.

- ² No individual Shareholders are named as no single Shareholder can exercise control over Birch.

- (3) The name, title, post office address and telephone number of the officer or contact point, such as legal counsel, to whom correspondence concerning the Application is to be addressed:

For Ionex

James J. Freeman
Brett Heather Freedson
KELLEY DRYE & WARREN, LLP
1200 Nineteenth Street, N.W.
Suite 500
Washington, D.C. 20036
Tel. (202) 887-1211

For Birch

Jeffrey A. Marks
LATHAM & WATKINS
555 Eleventh Street, N.W.
Suite 1000
Washington, D.C. 20004
Tel. (202) 637-2120

With copies to:

Russ Merbeth
Vice President and General Counsel
IONEX TELECOMMUNICATIONS, INC.
15305 Dallas Parkway
Suite 1500
Addison, Texas 75001
Tel. (214) 646-2340

Gregory C. Lawhon
Senior Vice President of Public Policy
and General Counsel
BIRCH TELECOM, INC.
2020 Baltimore Avenue
Kansas City, Missouri 64108
Tel. (816) 300-3000

- (4) The name, address, citizenship and principal business of any person or entity that directly or indirectly owns at least 10% of the equity of the Applicant, and the percentage of equity owned by each of those entities (to the nearest one (1) percent):

At the present time, Birch holds 100 percent of the equity of each of its subsidiaries authorized to provide domestic telecommunications service. Birch is a corporation formed under the laws of the State of Delaware and is headquartered at the address listed above. The entities that directly or indirectly hold at least 10 percent of the equity of Birch are as follows: LB 1 Group, Inc. (31%)³ and Bear Stearns Corporate Lending, Inc. (10%)⁴. An organizational chart

³ LB 1 Group, Inc. is a corporation formed under the laws of the State of Delaware, and is headquartered at 745 Seventh Avenue, 16th Floor, New York, New York 10019-6801. LB 1 Group, Inc. is a wholly owned subsidiary of Lehman Brothers. In addition to the 24 percent equity interest in Birch held by LB 1 Group, Inc., an additional approximately 7 percent equity interest in Birch is held in the name of Lehman Brothers, bringing the total ownership for Lehman Brothers affiliated companies to 31 percent. The principal business of LB 1 Group, Inc. is investments.

⁴ Bear Stearns Corporate Lending, Inc., a wholly owned subsidiary of The Bear Stearns Companies, Inc., is a corporation formed under the laws of the State of

depicting the pre-merger ownership of Birch and its subsidiaries authorized to provide domestic telecommunications service is attached hereto as *Exhibit B*.

Upon completion of the transaction described herein, Ionex⁵ will hold a 100 percent equity interest directly in Birch, and indirectly in each of the operating subsidiaries of Birch. The entities that directly or indirectly will hold at least 10 percent of the equity of Ionex upon completion of the transaction are as follows: Gilbert Global Equity Partners, L.P. (32%)⁶; ION Investors II LLC (13%)⁷; and VSA Ionex LLC (13%)⁸. In addition, former shareholders of Birch will hold a combined 26.4 percent equity interest in Ionex, however, none of those shareholders individually will hold a 10 percent or greater equity interest in Ionex. An organizational chart depicting the post-merger ownership of Birch and its subsidiaries authorized to provide domestic telecommunications service is attached hereto as *Exhibit C*.

Delaware, and is headquartered at 383 Madison Avenue, 8th Floor, New York, New York 10179. The principal business of Bear Stearns Corporate Lending, Inc. is investments.

5 Ionex is a corporation formed under the laws of the State of Delaware and is headquartered at the address listed above. At the present time, the entities that directly or indirectly own at least 10 percent of the equity of Ionex are as follows: Gilbert Global Equity Partners, L.P. and affiliated companies (34%); VSA Ionex LLC (14%); ION Investors II LLC and affiliated companies (14%); Lucent Technologies (10%); and ISPT/AIG (16%). An organizational chart depicting the pre-merger ownership of Ionex and its subsidiaries authorized to provide domestic telecommunications service is attached hereto as *Exhibit B*.

6 Gilbert Global Equity Partners, L.P. is a limited partnership formed under the laws of the State of Delaware, and is headquartered at 785 Smith Ridge Road, New Canaan, Connecticut 06840. In addition to the 22 percent equity interest in Ionex to be held by Gilbert Global Equity Partners, L.P., an additional approximately 7 percent equity interest in Ionex will be held in the name of Gilbert Global Equity Partners (Bermuda) L.P., and an additional approximately 3 percent equity interest in Ionex will be held in the name of GGEP/GGECC Equity Partners, LP, bringing the total ownership for the Gilbert Global Equity Partners affiliated companies to approximately 32 percent. The principal business of Gilbert Global Equity Partners, L.P. is investments.

7 ION Investors II LLC is a limited liability company formed under the laws of the State of Delaware, and is headquartered at 350 Park Avenue, New York, New York 10021. In addition to the 11 percent equity interest in Ionex to be held by ION Investors II LLC, an additional approximately 2 percent equity interest in Ionex will be held in the name of ION Investors I LLC, bringing the total ownership for ION Investors affiliated companies to approximately 13 percent. ION Investors II LLC is a holding company.

8 VSA Ionex LLC is a limited liability company formed under the laws of the State of Delaware, and is headquartered at 350 Park Avenue, New York, New York 10021. VSA Ionex LLC is a holding company.

- (5) Certification pursuant to §§ 1.2001 through 1.2003 of this chapter that no party to the Application is subject to denial of Federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988.

As evidenced by the signatures to this Application, the Applicants respectively certify that no party to this Application is subject to denial of Federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988.

- (6) A description of the transaction:

The transfer of ownership and control of Birch, and the indirect transfer of control of the Section 214 domestic authorizations currently held by Birch's operating subsidiaries, will be effected by the merger of Birch with a special purpose subsidiary of Ionex, whereby Birch will be the surviving entity and will become a wholly owned, direct subsidiary of Ionex. Upon completion of the transaction, Birch will continue to wholly own and directly control each of its existing operating subsidiaries. Ionex will issue new shares of its own stock to the diffuse group of current shareholders of Birch, *pro rata*, so that they will hold approximately 18 percent to 26.4 percent of the total outstanding stock of Ionex (depending on the amount of additional funding provided by Ionex investors as discussed below), but will not control it.

An integral part of the transaction is a multimillion dollar additional investment by the current shareholders of Ionex, the precise amount of which will not be determined until just prior to the closing of the transaction. However, even if Birch's shareholders received the maximum number of shares contemplated under the transaction, none of the current shareholders of Birch will hold a 10 percent or greater controlling interest in Ionex.⁹

- (7) A description of the geographic areas in which the transferor and transferee (and their affiliates) offer domestic telecommunications services, and what services are provided in each area:

In addition to their respective Section 214 authorizations to provide domestic interstate telecommunications service, Birch's operating subsidiaries collectively are authorized to provide, and currently provide, intrastate telecommunications services in the following states: Texas, Illinois, Indiana, Michigan, Ohio, Wisconsin, Kansas, Missouri, Oklahoma, Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee. Through its operating subsidiaries, Birch provides bundled local and long distance services, calling card services, toll free numbers, dial-up Internet access (using ISDN, DSL, T1 and/or other high-speed facilities), Web hosting, integrated voice and data transmission services, and telephone equipment sales and services, primarily to

⁹ Because the current shareholders of Ionex will continue to hold approximately a 75 percent or greater controlling interest in Ionex, Ionex will not experience a change of control as a result of the transaction.

small and medium-sized business customers located in the Midwest and Southeastern United States. Birch currently has more than 371,000 lines in service.

Through its operating subsidiaries, Ionex currently provides facilities-based telecommunications services, including local and long distance telephone service, enhanced voice services and high-speed data services, to more than 60,000 small and medium-sized business customers, located primarily in Texas, Oklahoma, Kansas, Missouri, Minnesota, South Dakota, Colorado and Iowa.

- (8) A statement as to how the Application fits into one or more of the presumptive streamlined categories in this section or why it is otherwise appropriate for streamlined treatment:

This Application is presumed eligible for streamlined treatment under Section 63.03(b)(2)(i) of the Commission's rules because Birch and Ionex combined will have a market share in the interstate, interexchange market of less than 10 percent, and will provide competitive telephone exchange services only in geographic areas served by a dominant local exchange carrier that is not a party to the transaction described herein. Further, none of the Applicants is dominant with respect to any service.

- (9) Identification of all other Commission applications related to the same transaction:

The Applicants also are filing with the International Bureau of the Commission applications pursuant to Section 63.24(e) of the Commission's rules for authority to transfer ownership and control of Birch and its operating subsidiaries holding Section 214 authorizations to provide international telecommunications services.

- (10) A statement whether the Applicants are requesting special consideration because either party to the transaction is facing imminent business failure:

The Applicants are not requesting special consideration.

- (11) Identification of any separately filed waiver requests being sought in conjunction with the transaction:

The Applicants have not separately filed any waiver request in conjunction with the transaction described herein.

- (12) A statement showing how grant of the Application will serve the public interest, convenience and necessity, including any additional information that may be necessary to show the effect of the proposed transaction on competition in domestic markets:

The Applicants respectfully submit that approval by the Commission of the transaction described herein would serve the public interest. As a result of the

transaction, Birch and Ionex will be able to take advantage of greater economies of scale and Birch will have access to additional capital from a well-financed parent, Ionex. Moreover, Birch's operating subsidiaries will continue to provide telecommunications services to their current customers under the same names, and pursuant to the same authorizations and tariffs. The proposed transaction does not involve any assignment of telecommunications authorizations or change in carriers providing telecommunications service to customers, or any change in the rates, terms and conditions of service. It is contemplated that the current management of Birch's operating subsidiaries, and the contact for customer and Commission inquiries will remain the same following the proposed transaction. Thus, the transaction will be transparent to the current customers of Birch's operating subsidiaries and will not have any adverse impact upon them.

The public interest is best served when consumers have a choice of telecommunications service providers. Given the serious problems facing the competitive telephone industry in recent years, and the numerous resulting bankruptcies, including the recently completed Chapter 11 reorganization of Birch, it is apparent that such competition is seriously threatened. The proposed transaction will facilitate the ability of Birch and Ionex, through their operating subsidiaries, to compete more effectively against the incumbent telecommunications carriers in their service areas, and thereby will enhance long term consumer choice throughout the United States. The Applicants will benefit from the significant inflow of capital that will result from the transaction, and Birch's management team will add a depth of experience to Ionex's current operations, which, post-transaction, will further facilitate the success of both Birch and Ionex. Accordingly, the Commission's approval of this Application will result in the creation of a larger and financially stronger company, and will serve the public interest.

WHEREFORE, in consideration of the foregoing, the Applicants respectfully request that the transfer of control over Birch Telecom, Inc. and its operating subsidiaries be approved.

BIRCH TELECOM, INC., and
ITS SHAREHOLDERS

By: Gregory C. Lawhon
(Name) Gregory C. Lawhon
(Title) Senior Vice President and
Shareholder

IONEX TELECOMMUNICATIONS, INC.

By: _____
(Name)
(Title)


DATED: February 4, 2003

WHEREFORE, in consideration of the foregoing, the Applicants respectfully request that the transfer of control over Birch Telecom, Inc. and its operating subsidiaries be approved.

BIRCH TELECOM, INC., and
ITS SHAREHOLDERS

By: _____
(Name)
(Title)

IONEX TELECOMMUNICATIONS, INC.

By: 
(Name) RUSSELL C. MERRETT
(Title) VICE PRESIDENT & GENERAL COUNSEL

DATED: February 4, 2003

EXHIBIT A

*All Direct Wholly Owned Subsidiaries of Birch Telecom, Inc., Except for the Following Indirect Wholly Owned Subsidiaries:
Birch Telecom of Texas Ltd., L.L.P., American Local Telecommunications, L.L.C., G.B.S. Communications, Inc., and M.B.S. Leasing, Inc.*

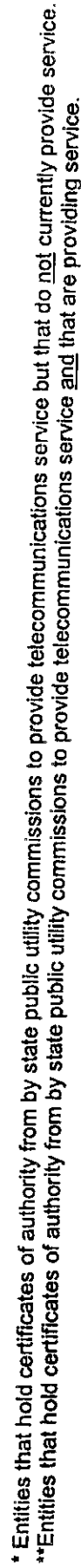
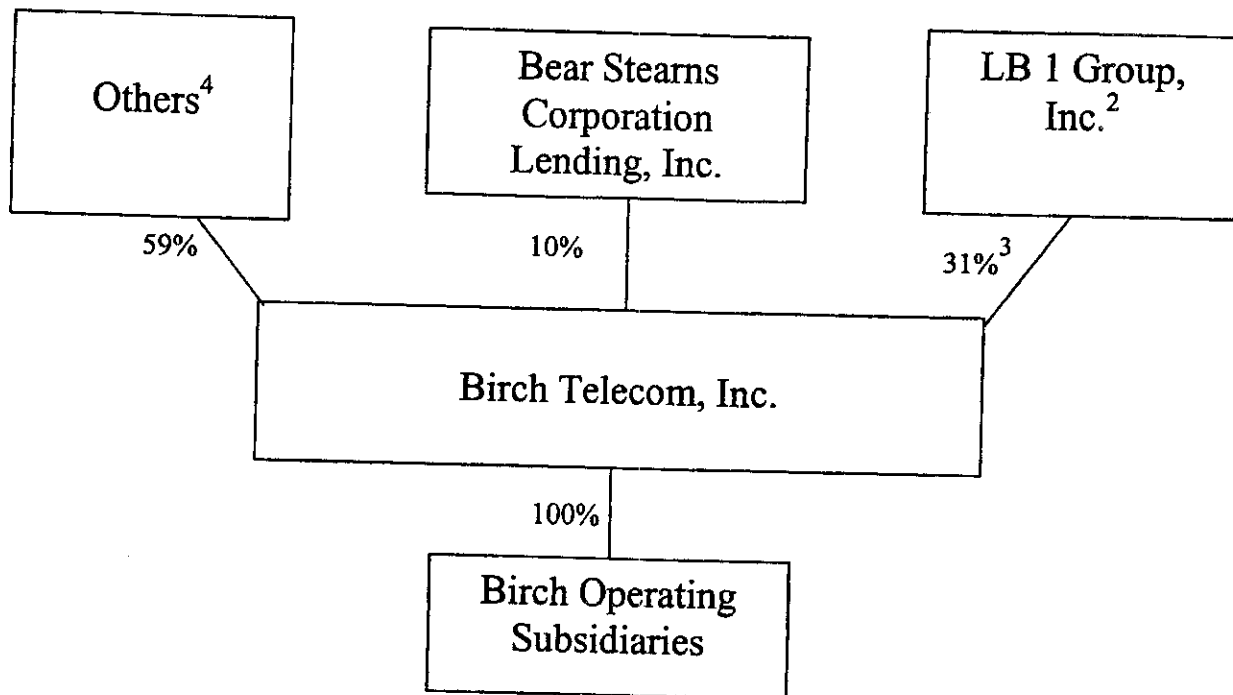


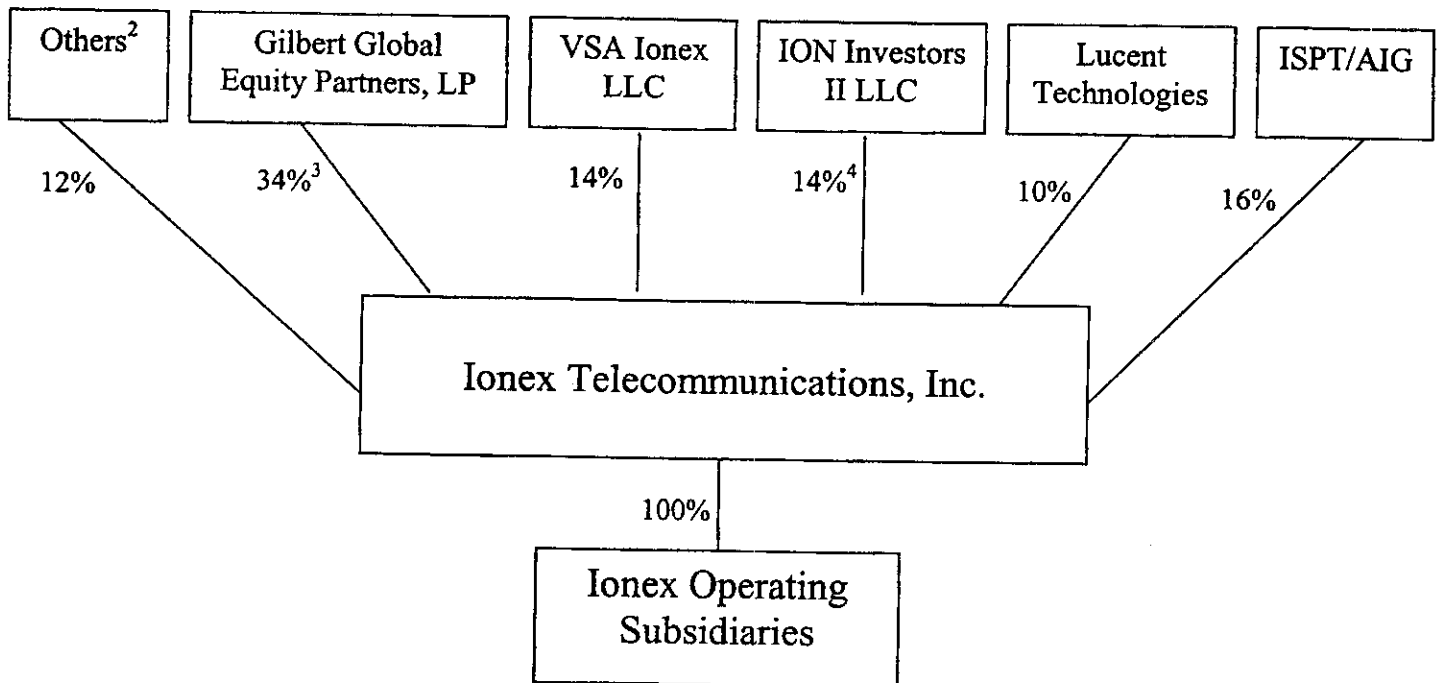
EXHIBIT B

Birch Telecom of the South, Inc. Pre-Merger¹



1. These diagrams show ownership as approximate percentages of the voting interests in Birch Telecom, Inc. ("Birch").
2. LB 1 Group, Inc. is a subsidiary of Lehman Brothers.
3. In addition to the 24% ownership held by LB1 Group, Inc., an additional approximately 7% interest in Birch is held in the name of Lehman Brothers, bringing the total ownership for Lehman Brothers-affiliated companies to approximately 31%.
4. None of the remaining shareholders hold a voting interest of 10% or greater.

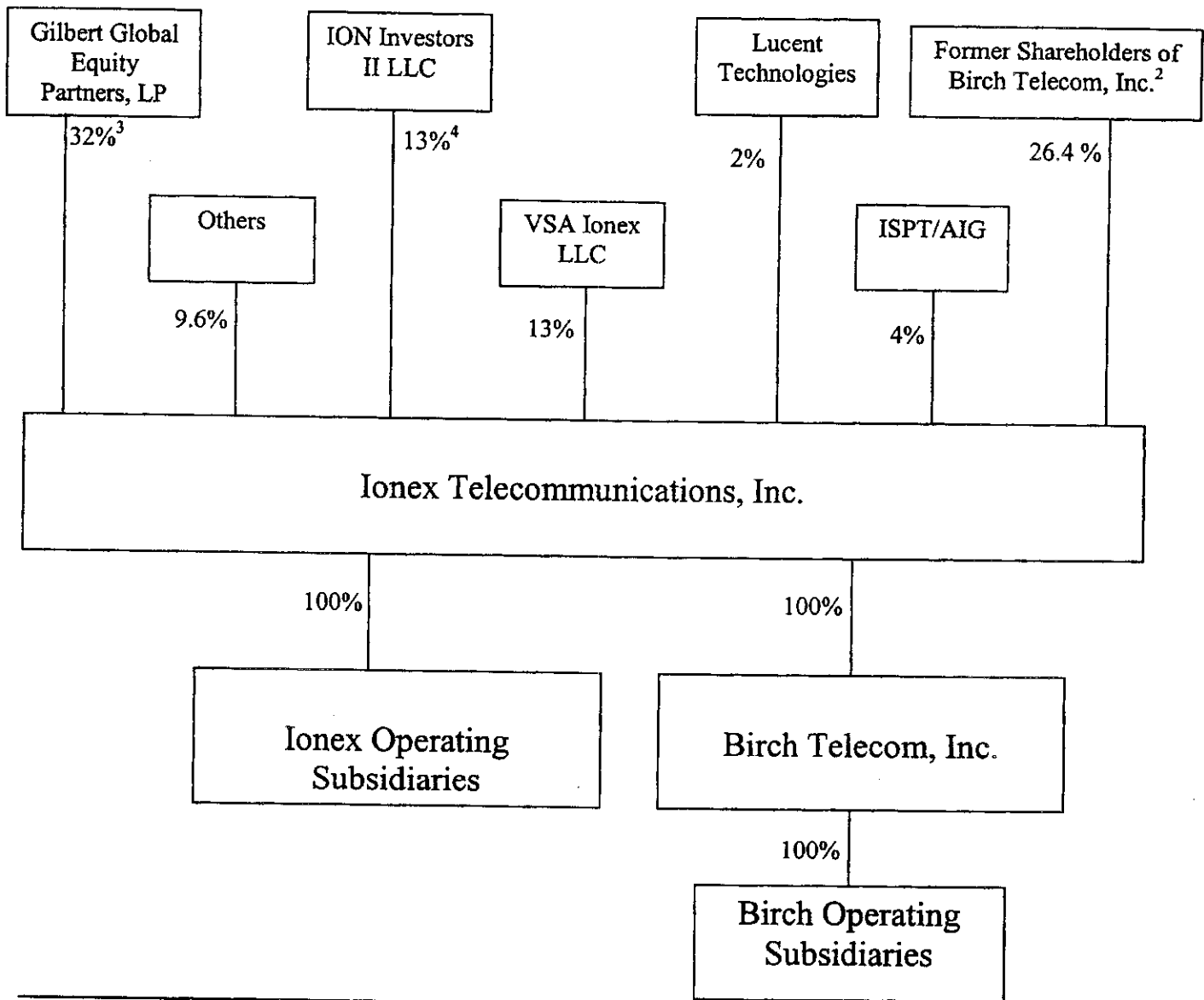
Ionex Telecommunications, Inc. Pre-Merger¹



1. These diagrams show ownership as approximate percentages of the voting interests in Ionex Telecommunications, Inc. ("Ionex").
2. None of the remaining shareholders holds a voting interest of 10% or greater.
3. In addition to the 24% ownership held by Gilbert Global Equity Partners, L.P., an additional approximately 7% interest in Ionex is held in the name of Gilbert Global Equity Partners, (Bermuda) L.P., and an additional approximately 3% interest is held in the name of GGEP/GGECC Equity Partners, LP bringing the total ownership for Gilbert Global Equity Partners affiliated companies to approximately 34%.
4. In addition to the 12% ownership held by ION Investors II LLC, an additional approximately 2% interest in Ionex is held in the name of ION Investors I LLC, bringing the total ownership for ION Investors affiliated companies to approximately 14%.

EXHIBIT C

Corporate Organization Post-Merger¹



1. These diagrams show ownership as approximate percentages of the voting interests in Ionex Telecommunications, Inc. ("Ionex"). These figures represent interests resulting from the minimum additional investment contemplated by the merger agreement. The existing Ionex shareholders' interest will increase if they elect to make more than the minimum additional investment and the interest in Ionex of the Birch shareholders will correspondingly decrease. In no event, will Birch's current shareholders hold less than 18.0% in the post-merger Ionex.
2. None of the current shareholders of Birch will hold a 10% or greater interest in the post-merger Ionex.
3. In addition to the 22% ownership held by Gilbert Global Equity Partners, L.P., an additional approximately 7% interest in Ionex is held in the name of Gilbert Global Equity Partners, (Bermuda) L.P., and an additional approximately 3% interest is held in the name of GGEP/GGECC Equity Partners, LP bringing the total ownership for Gilbert Global Equity Partners affiliated companies to approximately 32%.
4. In addition to the 11% ownership held by ION Investors II LLC, an additional approximately 2% interest in Ionex is held in the name of ION Investors I LLC, bringing the total ownership for ION Investors affiliated companies to approximately 13%.